

AMENDED IN SENATE JANUARY 26, 2004
AMENDED IN SENATE SEPTEMBER 8, 2003
AMENDED IN SENATE JUNE 3, 2003
AMENDED IN SENATE MAY 12, 2003
AMENDED IN ASSEMBLY FEBRUARY 6, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 44

Introduced by Assembly Member Pacheco

December 2, 2002

An act to amend Section 2625 of the Penal Code, and ~~Sections 294 and 366.21~~ *Section 294* of the Welfare and Institutions Code, relating to dependent children, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 44, as amended, Pacheco. Dependent children: juvenile court hearings.

Existing law provides for the notification of various parties regarding juvenile court proceedings to determine, review, revise, or terminate the status of a child as a dependent child of the court. Chapter 416 of the Statutes of 2002, operative January 1, 2003, revised and recast those notice provisions. Chapter 918 of the Statutes of 2002, operative January 1, 2003, did not incorporate those revisions.

This bill would incorporate and reference the revisions in the notice provisions that are contained in Chapter 416 of the Statutes of 2002. The

bill would further recast related service of notice provisions to require service of notice at least 30 days, rather than 45 days, before the date of a hearing in cases where publication is ordered. The bill would also permit notice of continuation of specified hearings by any means that the court determines is reasonably calculated to provide notice, or as specified. The bill would make other nonsubstantive, technical changes to these provisions.

Because this bill would increase the duties of local social workers and probation officers, this bill would impose a state-mandated local program.

~~This bill would incorporate additional changes to Section 294 of the Welfare and Institutions Code proposed by AB 579, to become operative only if both bills are chaptered and become effective on or before January 1, 2004, and this bill is chaptered last.~~

~~The bill would also incorporate additional changes to Section 366.21 of the Welfare and Institutions Code proposed by AB 408 and AB 579, to become operative only if one or both bills are chaptered and become effective on or before January 1, 2004, and this bill is chaptered last.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2625 of the Penal Code is amended to
- 2 read:
- 3 2625. (a) For the purposes of this section only, the term
- 4 “prisoner” includes any individual in custody in a state prison, the



1 California Rehabilitation Center, or a county jail, or who is a ward
2 of the Department of the Youth Authority or who, upon a verdict
3 or finding that the individual was insane at the time of committing
4 an offense, or mentally incompetent to be tried or adjudged to
5 punishment, is confined in a state hospital for the care and
6 treatment of the mentally disordered or in any other public or
7 private treatment facility.

8 (b) In any proceeding brought under Part 4 (commencing with
9 Section 7800) of Division 12 of the Family Code, and Section
10 366.26 of the Welfare and Institutions Code, where the proceeding
11 seeks to terminate the parental rights of any prisoner, or any
12 proceeding brought under Section 300 of the Welfare and
13 Institutions Code, where the proceeding seeks to adjudicate the
14 child of a prisoner a dependent child of the court, the superior court
15 of the county in which the proceeding is pending, or a judge
16 thereof, shall order notice of any court proceeding regarding the
17 proceeding transmitted to the prisoner.

18 (c) Service of notice shall be made pursuant to Section 7881 or
19 7882 of the Family Code or Section 290.2, 291, or 294 of the
20 Welfare and Institutions Code, as appropriate.

21 (d) Upon receipt by the court of a statement from the prisoner
22 or his or her attorney indicating the prisoner's desire to be present
23 during the court's proceedings, the court shall issue an order for the
24 temporary removal of the prisoner from the institution, and for the
25 prisoner's production before the court. No proceeding may be held
26 under Part 4 (commencing with Section 7800) of Division 12 of
27 the Family Code or Section 366.26 of the Welfare and Institutions
28 Code and no petition to adjudge the child of a prisoner a dependent
29 child of the court pursuant to subdivision (a), (b), (c), (d), (e), (f),
30 (i), or (j) of Section 300 of the Welfare and Institutions Code may
31 be adjudicated without the physical presence of the prisoner or the
32 prisoner's attorney, unless the court has before it a knowing waiver
33 of the right of physical presence signed by the prisoner or an
34 affidavit signed by the warden, superintendent, or other person in
35 charge of the institution, or his or her designated representative
36 stating that the prisoner has, by express statement or action,
37 indicated an intent not to appear at the proceeding.

38 (e) In any other action or proceeding in which a prisoner's
39 parental or marital rights are subject to adjudication, an order for
40 the prisoner's temporary removal from the institution and for the

1 prisoner's production before the court may be made by the
2 superior court of the county in which the action or proceeding is
3 pending, or by a judge thereof. A copy of the order shall be
4 transmitted to the warden, superintendent, or other person in
5 charge of the institution not less than 15 days before the order is
6 to be executed. The order shall be executed by the sheriff of the
7 county in which it shall be made, whose duty it shall be to bring
8 the prisoner before the proper court, to keep the prisoner safely,
9 and when the prisoner's presence is no longer required, to return
10 the prisoner to the institution from which he or she was taken. The
11 expense of executing the order shall be a proper charge against,
12 and shall be paid by, the county in which the order shall be made.

13 The order shall be to the following effect:

14

15 County of ____ (as the case may be).

16 The people of the State of California to the warden of ____:

17 An order having been made this day by me, that (name of
18 prisoner) be produced in this court as a party in the case of ____,
19 you are commanded to deliver (name of prisoner) into the custody
20 of ____ for the purpose of (recite purposes).

21 Dated this ____ day of ____, 20__.

22

23 (f) When a prisoner is removed from the institution pursuant to
24 this section, the prisoner shall remain in the constructive custody
25 of the warden, superintendent, or other person in charge of the
26 institution.

27 (g) Notwithstanding any other law, a court may not order the
28 removal and production of a prisoner sentenced to death, whether
29 or not that sentence is being appealed, in any action or proceeding
30 in which the prisoner's parental rights are subject to adjudication.

31 ~~SEC. 2. Section 294 of the Welfare and Institutions Code is~~

32 *SEC. 2. Section 294 of the Welfare and Institutions Code is*
33 *amended to read:*

34 294. The social worker or probation officer shall give notice
35 of a selection and implementation hearing held pursuant to Section
36 366.26 in the following manner:

37 (a) Notice of the hearing shall be given to the following
38 persons:

39 (1) The mother.

40 (2) The fathers, presumed and alleged.



1 (3) The child, if the child is 10 years of age or older.

2 (4) Any known sibling of the child who is the subject of the
3 hearing if that sibling either is the subject of a dependency
4 proceeding or has been adjudged to be a dependent child of the
5 juvenile court. If the sibling is 10 years of age or older, the sibling,
6 the sibling's caregiver, and the sibling's attorney. If the sibling is
7 under 10 years of age, the sibling's caregiver and the sibling's
8 attorney. However, notice is not required to be given to any sibling
9 whose matter is calendared in the same court on the same day.

10 (5) The grandparents of the child, if their address is known and
11 if the parent's whereabouts are unknown.

12 (6) All counsel of record.

13 (7) If the court knows or has reason to know that an Indian child
14 is involved, then to the Indian custodian and the tribe of that child.
15 If the identity or location of the parent or Indian custodian and the
16 tribe cannot be determined, notice shall be given to the Bureau of
17 Indian Affairs.

18 (b) The following persons shall not be notified of the hearing:

19 (1) A parent who has relinquished the child to the State
20 Department of Social Services or to a licensed adoption agency for
21 adoption, and the relinquishment has been accepted and filed with
22 notice as required under Section 8700 of the Family Code.

23 (2) An alleged father who has denied paternity and has
24 executed a waiver of the right to notice of further proceedings.

25 (3) A parent whose parental rights have been terminated.

26 (c) (1) Service of the notice shall be completed at least 45 days
27 before the hearing date. Service is deemed complete at the time the
28 notice is personally delivered to the person named in the notice or
29 10 days after the notice has been placed in the mail, or at the
30 expiration of the time prescribed by the order for publication.

31 (2) In the case of an Indian child, notice to the Indian custodian
32 and the tribe shall be completed at least 10 days before the hearing.

33 (3) In the case of an Indian child, if notice is given to the Bureau
34 of Indian Affairs, the bureau shall have 15 days after receipt to
35 provide the requisite notice to the parent or Indian custodian and
36 the tribe.

37 (4) *Service of notice in cases where publication is ordered shall*
38 *be completed at least 30 days before the date of the hearing.*

39 (d) Regardless of the type of notice required, or the manner in
40 which it is served, once the court has made the initial finding that

1 notice has properly been given to the parent, or to any person
2 entitled to receive notice pursuant to this section, subsequent
3 notice for any continuation of a Section 366.26 hearing may be by
4 first-class mail to any last known address, *by an order made*
5 *pursuant to Section 296, or by any other means that the court*
6 *determines is reasonably calculated, under any circumstance, to*
7 *provide notice of the continued hearing.* However, if the
8 recommendation changes from the recommendation contained in
9 the notice previously found to be proper, notice shall be provided
10 to the parent, and to any person entitled to receive notice pursuant
11 to this section, regarding that subsequent hearing.

12 (e) The notice shall contain the following information:

13 (1) The date, time, and place of the hearing.

14 (2) The right to appear.

15 (3) The ~~parent's~~ *parents'* right to counsel.

16 (4) The nature of the proceedings.

17 (5) The recommendation of the supervising agency.

18 (6) A statement that, at the time of hearing, the court is required
19 to select a permanent plan of adoption, legal guardianship, or
20 long-term foster care for the child.

21 (7) In the case of an Indian child, the notice shall contain a
22 statement that the parent or Indian custodian and the tribe have a
23 right to intervene at any point in the proceedings. The notice shall
24 also include a statement that the parent or Indian custodian and the
25 tribe shall, upon request, be granted up to 20 additional days to
26 prepare for the proceedings.

27 (f) Notice to the parents may be given in any one of the
28 following manners:

29 (1) If the parent is present at the hearing at which the court
30 schedules a hearing pursuant to Section 366.26, the court shall
31 advise the parent of the date, time, and place of the proceedings,
32 their right to counsel, the nature of the proceedings, and the
33 requirement that at the proceedings the court shall select and
34 implement a plan of adoption, legal guardianship, or long-term
35 foster care for the child. The court shall direct the parent to appear
36 for the proceedings and then direct that the parent be notified
37 thereafter by first-class mail to the parent's usual place of
38 residence or business only.

1 (2) Certified mail, return receipt requested, to the parent's last
2 known mailing address. This notice shall be sufficient if the child
3 welfare agency receives a return receipt signed by the parent.

4 (3) Personal service to the parent named in the notice.

5 (4) Delivery to a competent person who is at least 18 years of
6 age at the parent's usual place of residence or business, and
7 thereafter mailed to the parent named in the notice by first-class
8 mail at the place where the notice was delivered.

9 (5) If the residence of the parent is outside the state, service may
10 be made as described in paragraph (1), (3), or (4) or by certified
11 mail, return receipt requested.

12 (6) If the recommendation of the probation officer or social
13 worker is legal guardianship or long-term foster care, service may
14 be made by first-class mail to the parent's usual place of residence
15 or business.

16 (7) If the parent's whereabouts are unknown and the parent
17 cannot, with reasonable diligence, be served in any manner
18 specified in paragraphs (1) to (6), inclusive, the petitioner shall file
19 an affidavit with the court at least 75 days before the hearing date,
20 stating the name of the parent and describing the efforts made to
21 locate and serve the parent.

22 (A) If the court determines that there has been due diligence in
23 attempting to locate and serve the parent and the probation officer
24 or social worker recommends adoption, service shall be to that
25 parent's attorney of record, if any, by certified mail, return receipt
26 requested. If the parent does not have an attorney of record, the
27 court shall order that service be made by publication of citation
28 requiring the parent to appear at the date, time, and place stated in
29 the citation, and that the citation be published in a newspaper
30 designated as most likely to give notice to the parent. Publication
31 shall be made once a week for four consecutive weeks. Whether
32 notice is to the attorney of record or by publication, the court shall
33 also order that notice be given to the grandparents of the child by
34 first-class mail.

35 (B) If the court determines that there has been due diligence in
36 attempting to locate and serve the parent and the probation officer
37 or social worker recommends legal guardianship or long-term
38 foster care, no further notice is required to the parent, but the court
39 shall order that notice be given to the grandparents of the child by
40 first-class mail.

1 (C) In any case where the residence of the parent becomes
2 known, notice shall immediately be served upon the parent as
3 provided for in either paragraph (2), (3), (4), (5), or (6).

4 (8) If the identity of one or both of the parents, or alleged
5 parents, of the child is unknown, or if the name of one or both
6 parents is uncertain, then that fact shall be set forth in the affidavit
7 and the court, if ordering publication, shall order the published
8 citation to be directed to either the father or mother, or both, of the
9 child, and to all persons claiming to be the father or mother of the
10 child, naming and otherwise describing the child.

11 (g) Notice to the child and all counsel of record shall be by
12 first-class mail.

13 (h) In the case of an Indian child, notice to the tribe shall be by
14 registered mail, return receipt requested.

15 (i) Notwithstanding subdivision (a), if the attorney of record is
16 present at the time the court schedules a hearing pursuant to
17 Section 366.26, no further notice is required, except as required by
18 subparagraph (A) of paragraph (7) of subdivision (f).

19 (j) This section shall also apply to children adjudged wards
20 pursuant to Section 727.31.

21 *SEC. 3. Notwithstanding Section 17610 of the Government*
22 *Code, if the Commission on State Mandates determines that this*
23 *act contains costs mandated by the state, reimbursement to local*
24 *agencies and school districts for those costs shall be made*
25 *pursuant to Part 7 (commencing with Section 17500) of Division*
26 *4 of Title 2 of the Government Code. If the statewide cost of the*
27 *claim for reimbursement does not exceed one million dollars*
28 *(\$1,000,000), reimbursement shall be made from the State*
29 *Mandates Claims Fund.*

30 *SEC. 4. This act is an urgency statute necessary for the*
31 *immediate preservation of the public peace, health, or safety*
32 *within the meaning of Article IV of the Constitution and shall go*
33 *into immediate effect. The facts constituting the necessity are:*

34 *Chapters 416 and 918 of the Statutes of 2002 amended the law*
35 *governing notice in dependency proceedings. Those chapters*
36 *failed to make conforming code reference changes. Without*
37 *conforming legislation, the Welfare and Institutions Code contains*
38 *conflicting notice provisions. This conflict will result in confusion*
39 *among courts, attorneys, case workers, and those affected by*
40 *dependency proceedings. That confusion could affect the rights of*

1 *both children and their parents or guardians. Immediate action is*
2 *necessary to eliminate this conflict.*
3
4

5 **All matter omitted in this version of the**
6 **bill appears in the bill as amended in the**
7 **Senate, September 9, 2003 (JR 11)**
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